

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

AUG 14 1998

IN THE MATTER OF:

DOCKET NUMBER: 98-00575

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

1. The Enlisted Performance Report (EPR) rendered for the period 2 August 1993 through 1 August 1994 be declared void and removed from his records.
2. He be provided supplemental promotion consideration to the grade of master sergeant for promotion cycle 95E7.

APPLICANT CONTENDS THAT:

There are circumstances surrounding the report that demonstrate the over-all promotion recommendation is biased, focusing only on an isolated incident for which he received a Letter of Reprimand (LOR) from his commander. He understands that the LOR warranted consideration when considering his performance; however, the report's over-all rating reflects only his LOR, not his performance for the entire period.

In support of the appeal, applicant submits a personal statement, a statement from the rater, and statements from other individuals outside the rating chain.

The rater states that during the reporting period he rated applicant's performance as an overall "2" based upon the fact that he believed at the time that he was not ready for advancement to the rank of master sergeant. After looking back on his performance and the reasoning for the rating, he may have based the rating more heavily on two separate instances, rather than over the course of a year. He states that if he were to rate him today, under those same circumstances, he would give him a higher rating than a "2".

Applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

The applicant is currently serving in the Regular Air Force in the grade of technical sergeant.

The applicant filed four similar appeals under the provisions of AFI 36-2401, Correcting Officer and Enlisted Evaluation Reports. The Evaluation Report Appeal Board (ERAB) denied two of his appeals, and declined to consider the other two appeals because he did not provide any substantial new evidence.

The applicant received an LOR for failing to report for work on 1 February 1994 which resulted in him being placed on the Control Roster, establishment of an Unfavorable Information File (UIF), and being admitted to the alcohol rehabilitation center.

EPR profile since 1991 reflects the following:

<u>PERIOD ENDING</u>	<u>EVALUATION OF POTENTIAL</u>
1 Aug 91	5
1 Aug 92	5
1 Aug 93	4
*1 Aug 94 (Referral Report)	2
7 Mar 95	4
7 Mar 96	5
7 Mar 97	5
15 Oct 97	5

* Contested report.

AIR FORCE EVALUATION:

The Chief, BCMR and SSB Section, AFPC/DPPAB, reviewed this application and states that it is important to hear from all the evaluators on the contested report—not only for support, but for clarification/explanation. They believe the rater's statement is merely retrospection mellowed by time. The rater did not indicate he now has information not previously available to substantiate the applicant was dealt an injustice, or what may have specifically hindered him from giving the applicant a higher rating on the original report. They find it odd the applicant did not provide rebuttal comments to the referral report when it was originally rendered in August 1994. The applicant states that he did not offer comments because he just wanted to put the entire incident behind him. He also states that he was unaware the incident would be used as an indicator of his future performance or potential. They find that unbelievable. They do not understand how a technical sergeant with 15 years in the Air Force could not know that all reports, including referral reports, would factor into his promotion consideration,

especially since the rater's comments on the report indicate he supervised 20 people. They are convinced, that as a result of his nonselection during this last promotion cycle, he realized that had it not, been for the report, he would have been among those selected for promotion to master sergeant. They point out that an evaluation report is not erroneous or unjust solely because it may have contributed to nonselection for promotion or because it may impact future promotion or career opportunities. It must be proven the report is erroneous or unjust based on its contents. They find no specific evidence that the contested report is either flawed or unjust. In reference to the applicant asserting the indorsers from the contested report did not have firsthand knowledge of his duty performance and were therefore, unable to render a proper evaluation of his duty performance; they state that the Air Force charges evaluators with rendering fair and accurate EPRs and ensuring the comments support the ratings. Air Force policy allows evaluators, other than the rater, to be assigned at any point. Subsequent evaluators are not required to have first-hand knowledge of the ratee—if they feel their knowledge is insufficient, they may obtain information from other reliable sources. In reference to the applicant stating that his supervisor was biased, they quote AFI 36-2401 as stating, "To convince the board that an evaluator was unfavorably biased, you must cite specific examples of the conflict or bias. Provide firsthand evidence that clearly shows how the conflict prevented the evaluator from preparing a fair and accurate report. If other evaluators support an appeal because they were unaware of a conflict at the time, they should provide specific information (and cite their sources) which leads them to believe the report is not an objective assessment." This is not provided in this appeal. The contested report was rendered as a result of the applicant's unacceptable off-duty behavior. The fact that the applicant believes his supervisor did not adhere to the standards by which he was rated is irrelevant. The applicant's commander obviously considered drinking alcohol and not reporting for duty, to be a serious offense worthy of reproof. The applicant was appropriately served an LOR and placed on a Control Roster, which resulted in the establishment of a UIF. The applicant was expected to maintain standards of conduct and responsibility at least as stringent as the rest of the noncommissioned officer (NCO) corps. The applicant was involved in an alcohol-related incident, a point not in contention, and this impropriety was appropriately reflected in his EPR. They understand the applicant's desire for the Board to direct voidance of the contested report because of the promotion advantage. However, to remove the EPR from his record would be unfair to all the other **NCOs** who did not miss work because of alcohol abuse, and effectively performed their duties. They conclude that removal of the contested report would make the applicant's record inaccurate. Therefore, based on the evidence provided, they recommend denial of applicant's request.

A complete copy of the evaluation is attached at Exhibit C.

The Chief, Inquiries/AFBCMR Section, AFPC/DPPPAB, also reviewed this application and states that should the Board void the contested report in its entirety, upgrade the overall rating, or make any other significant change, providing the applicant is otherwise eligible, the applicant will be entitled to supplemental promotion consideration commencing with cycle 9537.

A complete copy of their evaluation is attached at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the advisory opinions and states that the rater would have to explain the unfavorable situation he was in when this report was written in order to explain why the report is unjust. He states that the rater hasn't mellowed with time, he knows he rated him harshly. He states that he tried to obtain statements from the indorser but was unable to do so. The indorser informed him that the incident automatically called for that rating, and to support him now would indicate he was wrong at the time. The incident required consideration when coming to a fair and accurate rating on the report. The indorser did not seek out the opinions of supervisors in his chain of command regarding his day-to-day performance before reaching this conclusion. He ignored achievement and potential displayed throughout the entire period, and the fact that it was an isolated event. If he had been a mediocre or substandard performer for all or most of the period the rating would have been accurate. That was not the case and a single incident was allowed to overshadow a year's work and achievement. In reference to why he did not provide a rebuttal to the referral report, he states that he was embarrassed to be facing the issue again after working for six months to put it behind him. He knew he had breached conduct and was not going to argue the matter. At that time, he gave no thought whatsoever to the impact the report would have on his career in the future. He was not accustomed to being in that type of situation and was eager to put the matter to rest. He states that the indorser validated the report without consulting other supervisors. He and the rater focused only on the incident. The indorser's knowledge that he had an incident of misconduct is not sufficient, well rounded knowledge to render a fair overall performance rating, whether he believed it was or not. In reference to his supervisor being biased, he states that the alcohol related incident was a breach of conduct that was dealt with by his commander. His punishment was compounded due to his rater's mismanagement practices coming into light at the same time. The indorser wanted the rater to raise his standards and demonstrate zero tolerance for misperformance. Fairness and objectivity were not foremost in mind when the report was written, not by the rater or the indorser. He states again, that his performance

prior to, and after the incident was not given due consideration in determining his overall rating. Instead, over emphasis was placed on an isolated incident. He states that the intent of his appeal is not to corrupt the Enlisted Evaluation System or to do an injustice to other hardworking NCOs. The intent of his appeal is to identify an inaccurate performance report, which contains such an erroneous overall rating that untrue statements were needed and used to justify the rating.

Applicant's complete response is attached at Exhibit F.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. The applicant contends there are circumstances surrounding the contested report that demonstrate the overall promotion recommendation is biased, focusing only on an isolated incident for which he received an LOR. However, based on the evidence of record, we are not persuaded that the contested report is an inaccurate assessment of the applicant's overall performance during the period in question. The applicant's contention that his supervisor did not adhere to the standards by which he was rated is irrelevant. The commander obviously considered drinking alcohol and not reporting for duty to be a serious offense worthy of reproof. The statement from the rater is noted; however, it does not cite specific examples of the conflict or bias. After reviewing the evidence submitted with this appeal, we believe that the applicant has failed to provide sufficient evidence showing that the contested report is in error or unjust. Therefore, in the absence of evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 16 June 1998, under the provisions of AFI 36-2603:

Mr. David W. Mulgrew, Panel Chair
Mr. Joseph G. Diamond, Member
Mr. Frederick R. Beaman III, Member
Ms. Phyllis L. Spence, Examiner (without vote)

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 19 Feb 98, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, AFPC/DPPPAB, dated 12 Mar 98, w/atchs.
Exhibit D. Letter, AFPC/DPPPWB, dated 3 Mar 98.
Exhibit E. Letter, AFBCMR, dated 10 Mar 98.
Exhibit F. Letter, Applicant, dated 25 Mar 98.



DAVID W. MULGREW
Panel Chair